

Decision 01-10-006 October 10, 2001

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of KEITH G. FRANKLIN, dba  
FRANKLIN CARTAGE, to Obtain a Household  
Goods Carrier Permit Pursuant to Sections 5131-  
5335 of the Public Utilities Code.

Application 01-02-027  
Filed February 26, 2001

**DECISION GRANTING CONDITIONAL HOUSEHOLD  
GOODS CARRIER PERMIT TO FRANKLIN CARTAGE**

**Summary**

This decision adopts with minor modification the all-party Settlement between Keith Franklin, dba Franklin Cartage (Franklin) and the Consumer Services Division (CSD). This decision orders the Rail Safety and Carriers Division, License Section, to issue Franklin a permit to operate as a household goods carrier for a term of two years as provided in the modified Settlement.

**Central Issue: Fitness to Provide Service**

The central issue before the Commission is to determine whether Franklin qualifies for a household goods carrier permit.

Sections 5101 through 5335 of the Public Utilities Code establish a program for the regulation of household goods carriers. Pursuant to these statutory provisions, the Commission operates a regulatory program that requires the applicant for a household goods carrier permit "to establish ability and reasonable financial responsibility to initiate the proposed operations."

(§ 5135(a).)

A key element of the Commission's regulatory program is to protect consumers from dishonest, fraudulent, and incompetent movers. Section 5135(f) states that the "commission shall issue a permit only to those applicants it finds have demonstrated the knowledge, ability, integrity and financial resources and responsibility to perform the service within the scope of their application." Section 5135(e) grants the Commission broad authority to refuse to issue a permit to those committing acts of "dishonesty or fraud."

### **Procedural Background**

Franklin's filing for formal Commission consideration of his request for a permit resulted from a January 3, 2001 administrative decision that declined to issue the requested permit.

On March 15, 2001, the Commission issued Resolution ALJ-176-3059, which, among other things, preliminarily categorized this proceeding as ratesetting and indicated that a hearing was not expected. On March 16, 2001, the Commission published notice in its Daily Calendar of these preliminary determinations and noted the assignment of Commissioner Brown and Administrative Law Judge (ALJ) Sullivan to the proceeding.

On March 16, 2001, CSD filed a protest of Franklin's application.

On April 27, 2001, a telephonic prehearing conference (PHC) took place with Commissioner Brown, ALJ Sullivan and the parties. At the PHC, the parties stated that they hoped to avoid evidentiary hearings through a stipulation of facts. ALJ Sullivan also requested that Franklin provide official reports on his criminal record to the Commission for its consideration. He scheduled a second PHC for June 6, 2001.

On May 2, 2001, Commissioner Brown issued a Scoping Memo detailing a program for managing the proceeding and confirming the Commission's preliminary determination that the proceeding constituted "ratesetting" and that

no hearings would prove necessary. The ruling identified the scope of the proceeding as determining whether to issue a household goods carrier permit to Franklin.

On May 17, 2001, Franklin provided the supplemental materials requested by ALJ Sullivan at the PHC.

On June 6, 2001, the Commission held a second PHC to consider the supplemental information titled "Additional Presentation and Proof of Fitness" and prepared by Franklin. In addition, CSD and Franklin announced that they had reached an agreement in principle concerning issues in this proceeding. CSD stated that it had no objections to the filing of Franklin's supplemental information.

On June 9, 2001, ALJ Sullivan issued a ruling ordering Franklin to file his additional materials and set July 9, 2001 as a date for the joint submission of a Settlement.

On June 23, 2001, Franklin filed his supplemental materials following the directions of the June 9 ruling.

On July 11, 2001, the parties filed the Settlement and the case was thereby considered submitted.

### **The Application of Franklin**

Franklin's application requests that the Commission issue a household goods carrier permit. Attached to the application is the material that the Commission requires of all applicants showing that they have the knowledge, ability, financial resources, and responsibility to perform as a household goods carrier.

Franklin's application acknowledges a criminal record and asserts that Franklin has rehabilitated himself. The application notes that much time has passed since Franklin's last conviction. Franklin states that he has rehabilitated

himself through the principles of Alcoholics Anonymous. The application also includes statements affirming rehabilitation from his wife and his mother, and statements affirming his fitness to receive a permit from neighbors and people with whom he has interacted since his parole in 1994.

Based on the direction of the ALJ, Franklin supplemented his initial application with an “Additional Presentation of Evidence and Proof of Fitness” dated May 17, 2001. This material contains documents from the Department of Corrections concerning Franklin’s record, the results of drug-screening tests, and other permits and records from the Department of Motor Vehicles and the California Highway Patrol. This material was accepted for filing without objection at the second PHC.

The material from the Department of Corrections notes that Franklin was released from prison to a three-year parole commencing on October 2, 1994 . On November 1, 1995, Franklin was discharged from parole. His record shows no other arrests or convictions from that date. Franklin states that the terms of his parole included drug testing, monthly office visits, and parole officer visits to his employer and family.

Other material in this filing indicate that the California Department of Motor Vehicles issued Franklin a motor carrier permit on March 5, 2001, under which Franklin may haul freight. The material also attests to Franklin’s credit worthiness and a negative drug-screening test performed on April 10, 1998. In addition, Franklin submitted a negative drug-screening test dated June 6, 2001.

### **Initial Position of CSD**

CSD’s protest stated that the Commission has the legal authority to deny a request for a permit “if it is shown that the Applicant has committed any act of dishonesty or fraud; committed any act which, committed by a Permitholder would be grounds for a suspension or revocation of the Permit; misrepresented

any material fact on the Application, or, committed a felony, or crime involving moral turpitude.” (§ 5135(e).)

The protest recommends that the Commission deny Franklin a permit because (1) he has committed a crime that if committed by a permit holder would be grounds for denying a permit; (2) he has committed a felony, or a crime of moral turpitude, that would justify Commission rejection of his application because insufficient time has lapsed from the time of the offense to the date of the application; and (3) he has misrepresented material facts in his application. CSD attached to its protest a declaration containing Franklin’s criminal record.

### **Proposed Settlement**

At the second PHC, CSD and Franklin announced that they had reached a settlement in principle resolving the issues before the Commission and leading to the issuance of a conditional permit. ALJ Sullivan stated his willingness to consider a Settlement detailing the conditions.

The Settlement, filed on July 11, 2001 and attached to this decision, provides for the following terms:

1. CSD will request the Commission to authorize the Rail Safety and Carriers Division, License Section, to issue Franklin a permit for a term of two years. Fourteen days prior to the expiration of such this term, CSD shall review Franklin’s compliance with the Settlement.
2. CSD will request, as soon as practicable after the review date but before the expiration of the two year term, that the License Section issue Franklin a permanent license and waive any fess provided that Franklin fulfills certain terms and conditions. These include:
  - Reports every 90 days concerning all customer claims against Franklin and the status of prior claims.
  - Reports of a drug test taken within ten days of the delivery of each report.

- Continued compliance with all State and Federal laws and regulations.
- If Franklin materially violates any provision of this Settlement, any state or federal statute, or Commission rules and regulations, CSD states that it will request that the License Section cancel the temporary permit.
- In the event that CSD files a formal enforcement action requesting the Commission to issue an Order Instituting Investigation, upon CSD's written request, Franklin agrees to:
  - a. Relinquish his permit pending the outcome of a hearing;
  - b. As soon as practicable cease and desist from advertising or operating as a household goods carrier in California.

In addition, parties agree that the provisions of the Settlement are not severable. Finally, the Settlement includes a variety of technical provisions associated with the adoption and execution of all settlements.

### **Discussion**

The active parties have tendered an “uncontested settlement” as defined in Rule 51(f), *i.e.*, a “...settlement that (1) is filed concurrently by all parties to the proceeding in which such... settlement is proposed for adoption by the Commission, or (2) is not contested by any party to the proceeding within the comment period after service of the ...settlement on all parties to the proceeding.” Rule 51.1(e) requires that settlement agreements be reasonable in light of the whole record, consistent with law, and in the public interest. The Settlement represents a resolution of all issues among the active parties.

CSD represents the consumer interest in this proceeding, and it has done so in a thorough and careful way. Franklin, the applicant, adequately represents himself before the Commission. Thus, the Settlement commands the sponsorship of all active parties to this proceeding, and those parties are fairly reflective of the affected interests.

### **Evidence Indicates Rehabilitation**

The central issue in this proceeding is Franklin's fitness to provide service. The Settlement would grant Franklin a conditional permit and subject him to a two-year period of drug testing and special scrutiny of his operations. This position is reasonable in light of the whole record.

Franklin's record shows strong evidence of rehabilitation. Franklin's record consists of a felony conviction for burglary of a Sears store on April 22, 1992, and an August 27, 1993 felony conviction for possession of a narcotic controlled substance. Prior to this period, Franklin committed several misdemeanor thefts and misdemeanors associated with drug possession and use. In sharp contrast to this prior record, we note that since 1993, Franklin's record shows no arrests or convictions for any violations of law. This pattern demonstrating reform supports the Settlement position that the Commission should offer Franklin a conditional permit as a household goods mover. In addition, since Franklin's prior criminal record shows a clear nexus with the use of controlled substances, the Settlement condition requiring testing for controlled substances every 90 days during the two-year period of temporary licensing is reasonable and in the public interest.

### **There is No Misrepresentation of Material Facts**

Perhaps the most serious issue raised in CSD's initial protest is the charge that Franklin misrepresented material facts in his application. CSD rightly states that dishonesty is by itself grounds for denial of a permit.

Upon close scrutiny of the application and supporting materials, it is clear that CSD's charge arose from the applicant's checking a box indicating:

"I have not been convicted of committing any felony or crime involving moral turpitude."

CSP charged that this specific action constitutes a misrepresentation of material facts. CSD notes that the applicant placed an asterisk beside this statement and attached a statement that he was never “involved in any case involving moral turpitude” but that he “did have a problem with the law nearly ten years ago.” Although CSD’s protest dismisses the importance of this statement, the Settlement places greater weight on this note and drops discussion of the issue of material misrepresentation.

We find that the weight placed on the note in the Settlement is more consistent with the facts before us. By adding this note to his application, Franklin was clearly not attempting to hide his criminal record. Indeed, Franklin’s note only brings attention to the fact that he has a criminal record.

In addition, the language of the note and Franklin’s statements in the first PHC demonstrate that Franklin misinterpreted the question in the application as one narrowly focused on crimes of moral turpitude, not the larger issue of felony convictions.

Franklin’s misinterpretation of the question concerning his criminal record is reasonable. The language of the statute grants the Commission the power to deny an application to an individual who has: “committed a felony, or crime involving moral turpitude.” (§ 5135(e).) The application form asks whether the applicant has been “convicted of committing any felony or crime of moral turpitude.” The comma that follows the word felony in the statute gives clarity that the application form, which does not have a comma, lacks. We conclude that we should amend the standard application form to make it clear that the Commission is interested in whether the applicant has committed any felony, whether or not it involves moral turpitude, as well as all crimes involving moral turpitude, whether felony or misdemeanor. In particular, the language on the permit application should be changed as follows:



“I have not been convicted of committing any felony, or **any** crime involving moral turpitude.” (Changes are in bold and underlined.)

We further note that the term “moral turpitude” is itself ambiguous and subject to a range of interpretations. We therefore recommend the amendment of the standard application form for a household goods carrier permit to provide applicants with clear guidance.

In conclusion, given Franklin’s attached statement acknowledging a criminal record and his clear but understandable misinterpretation of the application form, we find no material misrepresentation by Franklin. Therefore, the approach of the Settlement, which drops discussion of the issue of material misrepresentation and acknowledges the import of Franklin’s note, is reasonable in light of the record in this proceeding, consistent with the law, and in the public interest.

**Settlement Should be Amended to Permit Commission Action to Trigger Relinquishment of Permit During Two-Year Probationary Period**

The Settlement demonstrates both CSD’s vigilance in protecting consumer interests and Franklin’s willingness both to work with the Commission’s regulatory program and to demonstrate that he is fit to operate as a household goods carrier. In particular, we note that in the Settlement, Franklin agrees that should CSD initiate an enforcement action against Franklin during the two-year period in which he will hold a temporary permit, Franklin will relinquish the permit and desist from advertising or operating as a household goods carrier (Settlement, page. 4).

Although we appreciate Franklin’s willingness to waive his procedural rights in the face of an enforcement action and CSD’s concern that administrative procedure not delay the removal of an operator who fails to comply with rules and regulations, we believe that a slightly different approach better meets the

consumer's needs and our statutory obligations. In particular, because the relinquishment of a permit would essentially put Franklin out of business, we believe that an action of the Commission – not simply the action of an enforcement division – should trigger the surrender of the operating permit.

Thus, we will amend the Settlement as follows:

“In the event that ~~CSD files~~ the Commission institutes a formal enforcement action (e.g., ~~requesting the Commission for issues an~~ Order Instituting an Investigation against Franklin) ~~and upon CSD's written request to~~ Franklin agrees to perform the following:

- 2.5.1 Relinquish his Permit, pending the outcome of a hearing; and
- 2.5.2 As soon as practicable cease and desist from advertising or operating as a Household Goods Carrier in the State of California.”  
(Settlement, page 4.)

This amendment shifts the locus of the decision that triggers the surrender of the license from CSD to the Commission. As a matter of governance, we believe that this important decision should reside with the full Commission acting in its quasi-judicial capacity. In addition, we note that since the Commission acts quickly once a formal investigation is requested, we believe that this amendment to the Settlement will result in consumer protection through timely action identical to those that the current Settlement would yield.

We note that the provisions of the Settlement are not severable, and the Settlement states that “if the Commission or any court of competent jurisdiction overrules or modifies any material provision of this Settlement as legally invalid, this Settlement shall be deemed rescinded.” Although we are not overruling any terms as legally invalid, we believe that our proposed amendments better comport with the regulatory framework embodied in the Public Utilities Code. We seek the acceptance of the parties of these terms in comments on the proposed decision.

### **Summary**

In summary, our discussion makes it clear that adopting this all-party Settlement and granting a two-year permit to Franklin is reasonable in light of the record, yields an outcome consistent with the law, and is in the public interest.

### **Comments and Replies on Draft Decision**

The draft decision of ALJ Sullivan in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. In its Comments on the Proposed Decision, CSD noted its concurrence with the modifications to the Settlement contained herein. In addition, CSD expressed support for a clarification to the standard application form for a Household Goods Carrier Permit as recommended in our discussion above. Franklin's Reply Comments indicate his acceptance of the modifications contained herein.

### **Findings of Fact**

1. Franklin's application for a household goods carrier permit does not misrepresent any material facts.
2. Franklin has no arrests or convictions of any sort since August 1993.
3. Franklin's record provides evidence of rehabilitation.
4. The California Department of Motor Vehicles has issued Franklin a motor carrier permit.
5. Franklin passed a drug-screening test on June 6, 2001.
6. CSD and Franklin jointly filed a Settlement on July 11, 2001 that resolves every issue in this proceeding.
7. The Settlement commands the sponsorship of all active parties.
8. The active parties are fairly reflective of all of the affected interests in this proceeding.

9. The Settlement requires a drug-screening test by Franklin every 90 days for the two year period of the temporary permit.

10. The Settlement requires that Franklin file detailed reports on all customer complaints every 90 days.

11. No term of the Settlement contravenes statutory provisions or prior Commission decisions.

12. The Settlement, together with the record in this proceeding, convey sufficient information to permit the Commission to discharge its regulatory obligations with respect to the parties and their interests.

13. There is no opposition to approving the Settlement.

14. The surrendering of a permit to operate as a household goods carrier has the effect of putting a company out of business.

15. It is reasonable to make the obligation to surrender a permit contingent upon the action of the Commission as a whole.

16. It is reasonable to amend the Settlement submitted by CSD and Franklin by changing the sentences on page 4 of the Settlement as follows:

“In the event that ~~CSD files~~ the Commission institutes a formal enforcement action (e.g., ~~requesting the Commission for issues an~~ requesting the Commission for issues an Order Instituting an Investigation against Franklin) ~~and upon CSD’s written request to~~ Franklin agrees to perform the following:

2.5.1 Relinquish his Permit, pending the outcome of a hearing; and

2.5.2 As soon as practicable cease and desist from advertising or operating as a Household Goods Carrier in the State of California.”  
(Settlement, page 4.)

17. Franklin possesses the knowledge, ability, integrity, and financial resources and responsibility to perform services as a household goods carrier subject to the conditions enumerated in the Settlement.

18. It is reasonable in light of the entire record to grant Franklin a two-year temporary permit as a household goods carrier subject to the conditions contained in the Settlement as amended by Ordering Paragraph 1.

19. Modifying the application form for a household goods carrier permit can remove ambiguities.

### **Conclusions of Law**

1. The Settlement is an “uncontested settlement” as defined in Rule 51(f).
2. The Settlement, as modified in Ordering Paragraph 1, is reasonable in light of the whole record, consistent with law, and in the public interest.
3. The Settlement as modified should be adopted.
4. Granting Franklin a permit as a household goods carrier is reasonable.
5. In the interest of justice, this decision should be made effective immediately.

## **O R D E R**

### **IT IS ORDERED** that:

1. The Settlement (attached to this order) by Consumer Services Division (CSD) and Keith Franklin, dba Franklin Cartage (Franklin) shall be amended by changing the sentences on page 4 of the Settlement as follows:

“In the event that ~~CSD files~~ the Commission institutes a formal enforcement action (e.g., ~~requesting the Commission for~~ issues an Order Instituting an Investigation against Franklin) ~~and upon CSD’s written request to~~ Franklin agrees to perform the following:

- 2.5.1 Relinquish his Permit, pending the outcome of a hearing; and
- 2.5.2 As soon as practicable cease and desist from advertising or operating as a Household Goods Carrier in the State of California.” (Settlement, page 4.)

2. The Settlement, as revised by Ordering Paragraph 1, is adopted.

3. The Rail Safety and Carriers Division, License Section, shall issue Franklin a permit for a term of two years as a household goods carrier and any other permit as necessary, as provided for in the Settlement.

4. The language on the standard application form for a household goods carrier permit, as that language pertains to criminal records, shall be changed as follows:

“b) I (we) have have not been convicted of committing any felony, or **any** crime involving moral turpitude. (If the first box is checked, please attach full explanation.)” (Changes in bold and underlined.)

5. Application 01-02-027 is closed.

This order is effective today.

Dated October 10, 2001, at San Francisco, California.

LORETTA M. LYNCH  
President  
HENRY M. DUQUE  
RICHARD A. BILAS  
CARL W. WOOD  
GEOFFREY F. BROWN  
Commissioners

# **ATTACHMENT**

## **SETTLEMENT**

Pursuant to Rules 51 and 51.1 of the Commission Rules of Practice and Procedure (Rule), this Settlement is made and entered into this 9<sup>th</sup> day of July, 2001, by and between the following Parties in this proceeding, A.01-02-027:

- Consumer Services Division (CSD) Of The California Public Utilities Commission (Commission); and,
- Keith G. Franklin, the Applicant in this matter and an individual doing business in California as the sole owner of a household goods carrier business, Franklin Cartage Co., located at 408 Bernard #D, Costa Mesa CA 92627 (hereinafter referred to as “the Applicant” or “Franklin”).

The terms and conditions of this Settlement shall become binding upon the Applicant, his legal successors, assigns, designees, partners, agents, and/or employees when signed by the Parties.

## **BACKGROUND**

On or about November 9, 2000, Franklin applied for a Permit, certifying in writing that he had not been convicted of committing any felony or crime involving moral turpitude. In an attached handwritten note, Applicant further stated that he “did have a problem with the law nearly ten years ago” and his mistakes in the past involved “drugs & drinking.” CSD subsequently conducted a criminal background check and found several felony and misdemeanor convictions, one dated less than ten years ago, August 1993. Details of CSD’s research including certified copies of court records are set forth in its Protest. *See* CSD Protest, Exhibit (Ex) 1, Declaration of Special Agent Supervisor W. G. Waldorf, filed February 26, 2001, at Attach. A.



On January 3, 2001, CSD Director Richard W. Clark wrote the Applicant that Staff could not approve issuing him a Permit because his Application raises serious questions of his integrity, responsibility, and trustworthiness. To pursue the matter further, Applicant would have to file a formal Application with the Commission. *See id*, letter from R.W. Clark to Applicant dated January 3, 2001.

On February 26, 2001, Franklin formally applied, which was first noticed in the Daily Calendar on March 5, 2001, and docketed as A.01-02-027. CSD timely protested.

In the second Prehearing Conference (PHC) held on June 6, 2001, the Parties agreed to a Settlement and adopted basic terms and conditions as stated in CSD's letter of June 1, 2001, to the assigned Administrative Law Judge Timothy J. Sullivan.

On June 12, 2001, ALJ Sullivan issued a Ruling directing Franklin to file with the Commission's Docket office by June 29, 2001, the following:

- A redacted version of his previously submitted data entitled, "Additional Presentation and Proof of Fitness"; and
- The results of new drug screening test to be taken after the June 6 PHC.

**WHEREAS**, the Parties seek to avoid the expense, inconvenience, and uncertainty of an administrative hearing; and

**WHEREAS**, Franklin has agreed to demonstrate his fitness to be licensed during a Term of two years as set forth below;

**NOW, THEREFORE**, in consideration of the foregoing and the mutual promises made herein and intending to be legally bound by this Settlement, the Parties agree as follows:

1. CSD will request that the Commission authorize the Rail Safety and Carriers Division, License Section, to issue Franklin a Permit(s) for a Term of two years and any other Permit as necessary thereafter, as provided for in this

Settlement. The Term shall begin on the date of issuance of the temporary Permit by the License Section and end 720 calendar days thereafter (hereinafter referred to as “the Two Year Period”). Fourteen days prior to the expiration of such Term, CSD shall review Applicant’s compliance with this Settlement (hereinafter referred to as “the Review Date”).

2. As soon as practicable after the Review Date but before the expiration of the Two Year Term, CSD will request that the License Section issue Franklin a permanent Permit and waive any fees required therefor, provided that all the following terms and conditions are fulfilled and complied with during the Two Year Period:

- 2.1. Franklin shall send CSD, in care of William G. Waldorf, at 505 Van Ness Ave, San Francisco CA 94102, written reports (Reports) listing the name, address, telephone number, and date of each customer filed claim for loss and/or damage. The Report shall also describe the nature and date of Franklin’s response to such customer claim, in accordance with the requirements of Household Goods Carriers, MAX 4 regulations.

- 2.2. The first Report shall be delivered on or before the ninetieth calendar day after the date of issuance of the temporary Permit by the License Section. Each subsequent Report shall be delivered ninety-days thereafter. Each Report shall provide CSD with an update of any customer claims previously reported and include any new customer claims previously unreported.

- 2.3. Applicant will include with each Report described above the results of a medical drug test that he has taken within ten calendar days of the delivery date of each Report. The drug test evaluation shall state in writing the date of testing, the name, employment title, address, and telephone number of the person performing the test and indicate whether Applicant has or is using any illegal controlled substances, e.g., heroin, cocaine, or methamphetamines.

- 2.4. Franklin will comply with all applicable State and Federal law and

regulations, (including but not limited to the California Household Goods Carriers Act (Act), California Public Utilities Code, chapter 7, section 5101 et seq.), any pertinent order, rule, or regulation of the Commission, or any term, condition or limitation of the Permit.

2.5. Franklin understands that if he materially violates any provision of this Settlement, any State or Federal statute, or any applicable Commission rules and regulations, CSD will request that the License Section cancel the temporary Permit, withhold issuing a permanent Permit, and/or take enforcement action(s) to address the violations. In the event that CSD files a formal enforcement action (e.g., requesting the Commission for an Order Instituting Investigation) and upon CSD's written request to Franklin agrees to perform the following:

2.5.1. Relinquish his Permit, pending the outcome of a hearing; and

2.5.2. As soon as practicable cease and desist from advertising or operating as a Household Goods Carrier in the State of California.

2.6. The Parties hereby stipulate to the facts and law as stated in the CSD Declaration filed with its Protest, the redacted version of the Franklin data entitled, "Additional Presentation and Proof of Fitness," and the new drug screening test filed by Franklin on or before June 29;

2.7. The Parties agree that the Commission has primary jurisdiction over any interpretation, enforcement, or remedies pertaining to this Settlement, as indicated by California Constitution, Article XII, section 8. No Party may bring an action pertaining to this Settlement in any local, state, or federal court or administrative agency without first having exhausted its administrative remedies at the Commission.

2.8. The Parties acknowledge that this Settlement is subject to approval by the Commission. Franklin hereby agrees that CSD shall file on behalf of all the Parties the Motion for Commission Approval and Adoption as soon as

practicable after all the Parties have signed this Settlement. The Parties shall furnish such additional information, documents, and/or testimony as the Commission in granting said Motion and adopting this Settlement may require.

3. The provisions of this Settlement are not severable. If any Party fails to perform its respective obligations under this Settlement, the Settlement may be regarded as rescinded. Further, if the Commission or any court of competent jurisdiction overrules or modifies any material provision of this Settlement as legally invalid, this Settlement shall be deemed rescinded as of the date such ruling or modification becomes final.
4. The Parties acknowledge and stipulate that they are agreeing to this Settlement freely, voluntarily, and without any fraud, duress, or undue influence by any other Party. Each Party hereby states that it has read and fully understands its rights, privileges, and duties under this Settlement. Respondent further acknowledge full understanding of their right to discuss this Settlement with their respective legal counsel (if any), and have availed themselves of that right to the extent they deem necessary. In executing this Settlement, each Party declares that the provisions herein are fair, adequate, reasonable, and mutually agreeable. Applicant further acknowledges that as set forth in this Settlement, no promise or inducement has been made or offered them.
5. Each Party further acknowledges that after the execution of this Settlement, discovery may continue of facts that are in addition to or different from those known or believed to be true by any of the Parties. However, it is the intention of each Party to settle, and each Party does settle, fully, finally, and forever, the matters set forth in this Settlement notwithstanding such discovery.
6. This Settlement constitutes the Parties' entire Settlement, which cannot be

amended or modified without the express written and signed consent of all Parties hereto.

7. No Party has relied or presently relies upon any statement, promise or representation by any other Party, whether oral or written, except as specifically set forth in this Settlement. Each Party expressly assumes the risk of any mistake of law or fact made by such Party or its authorized representative.
8. This Settlement may be executed in any number of separate counterparts by the different Parties hereto with the same effect as if all Parties had signed one and the same document. All such counterparts shall be deemed to be an original and shall together constitute one and the same Settlement.
9. This Settlement shall be binding upon the respective Parties hereto, their legal successors, assigns, partners, members, agents, parent or subsidiary companies, affiliates, officers, directors, and/or shareholders.
10. This Settlement shall become effective and binding on the Parties as of the date it is fully executed.

IN WITNESS WHEREOF, the Parties, hereto have hereunder set their  
hands and seals on the date and in the year first above written.

CONSUMER SERVICES DIVISION

By: /s/ Richard W. Clark Date 7/9/01  
RICHARD W. CLARK  
Director

/s/ Cleveland Lee Date 7/9/01  
CLEVELAND W. LEE  
Staff Counsel  
Attorney for Consumer Services Division

KEITH G. FRANKLIN, dba FRANKLIN CARTAGE COMPANY

By: /s/ Keith Franklin Date 7/5/01

**(END OF ATTACHMENT)**